IN THE SUPREME COURT OF THE STATE OF UTAH
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Carman Snow et al.,
Challengers and Petitioners,

v. Case No. 20070417-SC

Office of Legislative Research and General Counsel,
Respondent.

Curtis S. Bramble et al.,
Petitioners,

v.

Office of Legislative Research & General Counsel et al.,
Respondents.

Summary of Decision

Case No. 20070417
Argued June 8, 2007
Decided June 8, 2007
Full Opinion to Follow

The decision[1] of the court was delivered by the Associate Chief Justice, Justice Wilkins:

The members of the court have met and considered the issues raised by the various parties both in their written submissions, and in oral arguments this morning. We have arrived at a unanimous decision. In doing so, we have been greatly helped by the thoughtful and thorough analysis supplied by counsel for the parties. We fear a small forest somewhere has given its all for

[1] This statement reflects the decision of the court in Consolidated Case No. 20070417. The reasoning and statements are subject to revision prior to issuance of the official opinion by the court. Any differences between this statement and the official opinion of the court shall be resolved by reference to the official opinion.

this case.

Our state constitution limits the proper role of the supreme court. The legislative branch of government is charged with the selection of policy, in response to the expressed wishes of citizens shown by the selection of their representatives and senators. The executive branch is charged with implementation of that policy. As he has said in this case, the role of the Lt. Governor, like that of the other state-wide elected officers, the Governor, Attorney General, Treasurer and Auditor, is to apply the policy expressed in law by the legislature.

Occasionally, the expression of state policy from our legislative branch is not as clear and understandable as they, or we as citizens, might hope. Such is the nature of the legislative process. However, when the policy, when the intent of the legislature, is unclear, it is to the judicial branch of state government that we turn for clarification.

Usually, a question about the proper use or application of a statute enacted by the legislature is brought to the trial courts as a starting point for the resolution. This process allows all who may have a legitimate stake in the outcome of the proceeding to thoughtfully add to the resolution, and for the issues and questions, should they persist to eventually reach the supreme court, to have been subjected to the careful review and critique of advocates for both sides, a trial judge and possibly a jury of citizens, and in most cases, three of our colleagues on the Utah Court of Appeals. This process, although sometimes lengthy, was calculated by the framers of our form of government to be most likely to produce a correct result.

In addition, when a case comes to us for review after that process, we usually have not only the work of the lawyers and lower courts to help us understand, we have the benefit of a period of weeks to review, consider, research, and resolve those questions. This investment of time is also designed to increase the likelihood of reaching legally correct and just results.

The Utah constitution also allows the citizens of Utah a direct hand in rejecting or modifying the handiwork of the legislative branch. An initiative petition offers an avenue for voters to create statutory law without the participation of the legislature. On the other hand, a referendum petition is for the sole purpose of giving voters the opportunity to accept or reject a specific legislative enactment.

When either of these direct citizen legislative actions

occur, it is to the ballot that the matter is finally directed. In the case of a referendum petition, citizens who vote are given a choice to accept or reject the challenged legislative action. The law by which the vote is accomplished describes in detail the responsibilities of many of the same state officers. It falls to the Lt. Governor to handle the ministerial duties of keeping track of the necessary paperwork, and issuing some of the directives required. It falls to the Legislative staff, specifically the Office of Legislative Research and General Counsel, the Legislature's lawyers, to craft a statement of what the voter is being asked to vote for. That statement, the ballot title, is carefully restricted by law to avoid any inadvertent or intentional slanting of the information that will appear on the ballots distributed to voters, and also reproduced in the information sent to voters by the state.

By law, the legislative legal staff is required to produce a statement, the ballot title, that is an impartial summary of the contents of the referendum. The title may not exceed 100 words. Once prepared, the ballot title is distributed to the referendum sponsors, and other interested persons. The sponsors have 15 days from the day the Lt. Governor mails the title to them within which to challenge the wording.

That challenge comes directly here. However, that challenge comes with strings attached. The Legislature, as is their duty under our constitution, has set the policy for how these challenges are to be resolved. The supreme court is required to examine the ballot title, hear arguments from the directly interested parties, and within five days of reaching our decision, send the Lt. Governor a ballot title that impartially summarizes the referendum issue on the ballot.

In addition, however, we are restricted in our review. We are required by law to presume that the ballot title prepared by the legislative staff is an impartial summary. We are not allowed to change the wording of the ballot title unless we are clearly convinced by the sponsors who challenge the wording that the ballot title as proposed is either "patently false" or "biased". It is not within our statutory grant of authority to modify the ballot title because we think there may be a better or more clearly stated way of putting it. The fact that all the world is confused by the ballot title, alone, is also not enough. To modify the title language, we must find by the heightened standard of proof that the proposed title is clearly false or clearly biased.

However, in addition to our statutory authority and

responsibility relating to false or biased ballot titles, we also have the authority granted us by the people of Utah under the constitution. That power is somewhat more extensive. And it is to that broader power that all of the parties appeal, in the event we do not agree with their particular application of the ballot title statutory authority.

While there are any number of reasons to reject the suggestion that we move beyond our limited ballot title review, there are also significant reasons urging our further action.

We anticipate preparation of a full opinion for publication and distribution describing the reasoning and analysis we have agreed upon in our review and resolution of these matters. For today, we offer the basic elements of our conclusions:

First, we find nothing in the work of the Office of Legislative Research and General Counsel suggesting any intentional or even inadvertent bias. Further, the ballot title prepared by Ms. Taylor and her legal staff appears to accurately and correctly reflect the precise nature and content of the ballot referendum submitted to the Lt. Governor.

However, the interaction of HB 148, the measure subject to the direct action of voters under the proposed referendum, and HB 174, the educational voucher amendments measure passed by more than two thirds of each house, is not addressed by the proposed ballot title. Ms. Taylor is correct that it is not within her power as Legislative General Counsel to interpret the ultimate consequence of the referendum vote on HB 148 on HB 174. It would have been inappropriate for the proposed ballot title to speculate on the resolution of that legal question.

It is also correct that we, as a court, do not give advisory opinions on the consequence of legislative enactments prior to action by the legislature. However, since HB 174 has been passed by both houses, and signed into law by the governor, it is properly within our mandate to consider the proper application and consequences of that statute.

With that relationship in mind, we have concluded that HB 174, “Educational Voucher Amendments” is dependent upon HB 148, “Educational Vouchers” for meaning. It is the clearly expressed intent of the legislature that the provisions of HB 174 were to modify the provisions of HB 148. Should HB 148 be rejected by the voters under the referendum before us, HB 174 would be without legal meaning. Specifically, we conclude that HB 174 was not intended by the Legislature to stand alone as an independent

act creating an educational voucher program, and therefore it does not. Although HB 174 is not subject to referendum by the voters, it is subject to the consequences of the referendum on HB 148.

Furthermore, now having the benefit of that legal conclusion regarding the dependence of HB 174 on HB 148, we are able to resolve any doubts that might have lingered about the accuracy and completeness of the proposed ballot title. If the voters choose to reject HB 148, HB 174 will not create an additional voucher program. If the voters choose to accept HB 148, the amendments of HB 174 will automatically be applied. However, automatic application of the HB 174 provisions in that event would not require changes in the proposed ballot title.

Nothing in the ballot title is substantively false; nothing in the ballot title suggests bias; and nothing need be added to reflect the impact of HB 174.

The challenges to the ballot title are rejected on their merits. The petitions for extraordinary writs are also denied on their merits. Any other matters raised by the parties not specifically addressed are also deemed hereby resolved.

The court will issue a written opinion in due course. Copies of this statement will be distributed to counsel immediately, and will be made available within 30 minutes in the office of the clerk. Finally, please note that while this statement reflects the unanimous decision of the court, it *does not* substitute for the official opinion of the court yet to be issued in writing.

We express gratitude to the parties and their counsel for the professional and excellent way in which this matter has been handled.